IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.866 OF 1992

M/s.Sangam Press Pvt. Ltd.
17-B, Kothrud, Pune ... Petitioner

V/s.

1. Regional Provident Fund
Commissioner, Survey No.47,
Plot No.1, Pune-Satara Road
Pune

2. Union of India
Through Secretary
Ministry of Labour
New Delhi ... Respondents

Mr.Rahul Nerlekar for Petitioner
Mr.Suresh Kumar for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 15, 2005**

ORAL JUDGMENT:

. The Petitioner challenges the order passed by the Regional Provident Fund Commissioner, Pune imposing damages for delayed payment of contributions towards provident fund for the period from March 1973 to May 1987. The first notice issued in January 1999 directed it to show cause why damages should not be levied for the delayed payment in respect of the provident fund dues. The Petitioner appeared before the Regional Provident Fund Commissioner, Pune (for short, 'the RPFC') claiming that although there was a delay in

depositing the contributions, it should be condoned in view of several factors brought to the notice of the RPFC. Accordingly, the Petitioner contended that besides the financial difficulties, the management of the company had changed hands twice over between the period 1973 and 1987. It was also contended that besides the financial problems, there was labour unrest due to which many workmen had to be retrenched and the company was unable to pay wages. The wages were not paid in time and consequently, the provident fund contributions were not paid on the due date. There is no dispute that since June 1987 all contributions in respect of Provident Fund dues have been paid on time and in accordance with law.

2. A perusal of the order shows that the RPFC has levied damages at various rates for the entire period i.e., for the period from March 1973 to May 1973 the rate was @12.5% of the dues. However, from November 1973 to 1980, there were delayed payments intermittently and the damages were levied at the rates of 100%, 50%, etc. For subsequent periods, varying rates of damages were levied from 2% to 100% of the dues. Therefore, it is not possible to discern the rationale behind the levy of damages at various rates.

3. The Apex Court in the case of *K. Streetlite Electric Corporation v/s. Regional Provident Fund Commissioner, Haryana,* **2001 II CLR 314** has held that if a specific plea of prejudice is pleaded and proved when damages are claimed at a very belated stage, the RPFC has to consider the same and impose appropriate damages. Various circulars issued by the Department from time to time stipulate the rates at which damages should be levied. The relevant circular for determining such damages is dated 16.8.1991 which came into force from 1st September 1991. It provides that when the delay is for a period of less than two months, the rate of damages to be levied is 17% of arrears per annum and the maximum rate of damages is 37% of the arrears per annum. Thus the rates vary between 17% and 37%.

4. In such circumstances, it would be appropriate to remand the proceedings to RPFC for deciding the issue in accordance with various judgments of this Court and the Supreme Court. Reliance placed by the learned Advocate for the Respondents on the judgement and order dated June 17, 2005 in Writ Petition No.2050 of 1995 and the judgment of the Supreme Court in the case of *Union of India & Ors. v/s. Super Processors,* **1993 I CLR 457** is apt.

5. The Petitioner shall accordingly make a representation within eight weeks from today before the RPFC, Pune. The RPFC will hear and decide the proceedings in accordance with the judgment of the Apex Court in the case *K. Streetlite* (supra) and *Super Processors* (supra) and the judgment of this Court in **Writ Petition No.2050 of 1995** decided on June 17, 2005 and any other relevant case law.

6. An amount of Rs.1 lakh has been deposited in this Court and invested in a nationalised bank. After the order is passed, the RPFC may withdraw from this Court the amount of damages levied. The balance will be refunded to the Petitioner, together with accrued interest.

7. Writ Petition is disposed off in the above terms.